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10 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 ORLO J. AMOS,

15 Defendant.  
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No. CR-08-0087-RHW

**ORDER DENYING MOTION FOR  
REDUCTION IN SENTENCE  
UNDER SECTION 3582(c)(2)**

17 On February 8, 2012, the Defendant filed a petition for habeas corpus under 28  
18 U.S.C. § 2241. *See* Case No. 12-CV-0094 (E.D. Wash. 2012). Although the petition  
19 did not set forth adequate grounds for habeas relief, the Defendant's arguments  
20 centered on the Fair Sentencing Act of 2010, and the Court construed the petition as  
21 a motion for retroactive application of the sentencing guidelines as permitted by 18  
22 U.S.C. § 3582(c)(2). (ECF No. 110). A portion of the Act reduced the disparity  
23 between criminal penalties for crack cocaine and powder cocaine offenses.

24 The Defendant plead to one count of distributing five or more grams of cocaine  
25 base. At the time of sentencing the Defendant had two prior drug-related felonies, and  
26 the Court classified him as a career offender and determined his applicable guideline  
27 range to be 188 to 235 months. U.S.S.G. § 4B1.1. The Court ultimately accepted the  
28 parties' Rule 11(c)(1)(C) plea agreement and sentenced the Defendant to 100 months.

1 But because the Defendant's applicable guideline range was based on Section 4B1.1  
2 and not using Section 2D1.1—the latter being the provision amended by the Fair  
3 Sentencing Act—the Defendant is not entitled to a reduction. United States v. Wesson,  
4 583 F.3d 728, 731 (9th Cir. 2009).

5 Moreover, the binding plea agreement resulted in a substantially more lenient  
6 sentence than that for which the guidelines otherwise provided. This reason alone  
7 supports denying the motion. Freeman v. United States, \_\_\_ U.S. \_\_\_, 132 S. Ct.  
8 2685, 2694 (2011).

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Defendant's Motion to Reduce Sentence (ECF No. 111) is **DENIED**.

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
12 order and to provide copies to counsel and the U.S. Probation Office.

13 **DATED** this 13<sup>th</sup> day of March, 2012.

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16 *s/Robert H. Whaley*  
17 **ROBERT H. WHALEY**  
18 United States District Judge  
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